

## **INTER-AGENCY MOU CONCERNING STANDARD METALS CORPORATION**

### **MEMORANDUM OF UNDERSTANDING AMONG THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8, USDA-FOREST SERVICE MOUNTAIN AND ALASKA REGIONS, DOI - BUREAU OF LAND MANAGEMENT, AND THE STATE OF COLORADO concerning THE STANDARD METALS CORPORATION**

#### **I. BACKGROUND**

A. The U.S. Environmental Protection Agency ("EPA"), the United States Department of Agriculture Forest Service ("Forest Service"), the Department of Interior Bureau of Land Management ("BLM") (collectively, the "Federal Agencies") and the State of Colorado ("State") hold claims against Standard Metals Corporation ("Standard Metals") for reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Standard Mine Site in Gunnison County, Colorado ("Standard Mine Site"), the Ross Adams Site on Prince of Wales Island, Alaska, the Antler Mine and Mill Site in Mohave County, Arizona ("Antler Site"), and the following six sites in San Juan County, Colorado: the American Tunnel, the Mayflower Mill, the Mogul Mine, the Grand Mogul Mine, the Arrastra Gulch Dump, and the Sunnyside Mine ("Silverton Sites"). The Standard Mine Site, the Ross Adams Site, the Antler Site and the Silverton Sites are hereinafter collectively referred to as the "Sites". The Forest Service, BLM and the State also hold claims against Standard Metals to recover damages for injury to, destruction of, or loss of natural resources at the Sites and surrounding riparian corridors, including the reasonable costs of assessing such injury, destruction or loss.

B. Standard Metals has limited financial ability to pay for response costs incurred and to be incurred, and for natural resource damages at the Sites.

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C. The United States Department of Justice ("DOJ"), on behalf of the Federal Agencies, and the State have entered into a settlement agreement with Standard Metals to avoid litigation by allowing Standard Metals to make cash payments from the proceeds of insurance claims ("Insurance Proceeds") and to convey real property to address its alleged civil liability for the Sites. The settlement agreement is set forth in a Consent Decree captioned *United States and the State of Colorado v. Standard Metals Corporation*, to be filed with the United States District Court for the District of Colorado ("Consent Decree").

D. The parties hereto recognize that in order to maximize recovery under the Consent Decree, they should coordinate their activities regarding negotiations with Standard Metals' insurance carriers and document how Insurance Proceeds shall be allocated among the Federal Agencies and the State.

## **II. COORDINATION AND COOPERATION**

A. The Federal Agencies and the State have designated the following persons to be involved in the day to day coordination and communication regarding negotiations with insurers:

ENVIRONMENTAL PROTECTION AGENCY:  
Andrea Madigan  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
303-312-6904  
madigan.andrea@epa.gov

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### FOREST SERVICE:

Mike Hope  
United States Department of Agriculture  
Office of General Counsel  
740 Simms Street, Suite 309  
Golden, Colorado 80401  
303-275-5545  
[michael.hope@usda.gov](mailto:michael.hope@usda.gov)

Gary Fremerman  
United States Department of Agriculture  
Office of General Counsel  
3351 South Building  
1400 Independence Avenue, S.W.  
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202-720-8041  
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### BUREAU OF LAND MANAGEMENT:

Lance Wenger United States Department of the Interior  
Office of the Solicitor  
Rocky Mountain Region  
755 Parfet Street, Suite 151  
Lakewood, Colorado 80215  
303-231-5353, ext. 447  
[lance.wenger@sol.doi.gov](mailto:lance.wenger@sol.doi.gov)

### DEPARTMENT OF JUSTICE:

Marcello Mollo  
United States Department of Justice  
Environmental and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044  
202-514-2757  
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### STATE OF COLORADO:

Jason King  
Assistant Attorney General  
Natural Resources and Environment Section  
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Denver, Colorado 80203  
303-866-5042  
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If any party changes its representative, such party will notify the other parties as soon as practicable.

B. DOJ and EPA shall take the lead in negotiations with the insurance carriers. DOJ and EPA shall keep the other parties informed of such negotiations and shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings with the insurance carriers. Each party shall have the opportunity to comment upon issues and shall participate in internal settlement discussions.

### **III. ALLOCATION OF INSURANCE PROCEEDS**

A. To satisfy its liability in connection with the Sites, Standard Metals has agreed to assist the parties hereto in pursuing recovery from all applicable insurance policies held by Standard Metals and to pay to the United States fifty percent (50%) of the first one hundred eighty thousand dollars (\$180,000) recovered and ninety percent (90%) of all insurance recovery in excess of the first one hundred eighty thousand dollars (\$180,000).

B. Insurance Proceeds shall be distributed in the following order:

1. EPA shall receive \$190,000 and the State shall receive \$30,000 as reimbursement for enforcement costs incurred to develop and pursue the insurance claims.
2. EPA shall receive reimbursement for future enforcement costs incurred in pursuing the insurance claims.
3. USDA shall receive reimbursement for enforcement costs associated with its contract with Eisenstein Malanchuk, LLP, in connection with the Ross Adams Site.
4. \$20,000 shall be held in reserve to pay real property tax associated with real property owned by Standard Metals that BLM and USDA have an option to acquire pursuant to the Consent Decree. This reserve shall be used, on a first-come, first-served basis, to reimburse either BLM or

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USDA, if any such tax is due when either agency exercises the option. If any funds remain in this reserve after the option period, it shall be distributed in accordance with the priorities set forth in this Memorandum.

5. After payment of all enforcement costs, Insurance Proceeds shall be allocated among the Sites in accordance with the following percentages:

- a. The Standard Mine Site is allocated a 36.4% share with 10% of such share to be paid to the State and the balance to be paid to EPA.
- b. The Ross Adams Site is allocated a 6% share with 100% of such share to be paid to the Forest Service Alaska Region.
- c. The Silverton Sites are allocated a 35% share with 50% of such share to be paid to BLM and 50% of such share to be paid to EPA. BLM and EPA each agree that any and all funds received as part of the share allocated to the Silverton Sites shall be used solely to conduct or pay for response actions at the Silverton Sites.
- d. The Antler Site is allocated a 7% share with 100% of such share to be paid to BLM.
- e. State natural resource damages for the Standard Mine Site and the Silverton Sites are allocated a 15.6% share with 100% of such share to be paid to the State.

C. The parties acknowledge that natural resource damage claims of BLM and the Forest Service in connection with the Sites are satisfied by each agency obtaining the option to take title to real property currently owned by Standard Metals in accordance with Paragraph 8 of the Consent Decree. If such option is exercised, BLM and/or the Forest Service agree to work with the State's Department of Natural Resources to identify federal property holdings within or adjacent to State lands that may be appropriate for State acquisition in further satisfaction of State NRD claims.

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D. EPA shall account for all enforcement costs for which it will seek reimbursement pursuant to Section III (B)(2) above and will provide such accounting to the parties hereto.

E. EPA may direct any portion of any proceeds received hereunder into a site-specific special account established to fund response actions at such site in the event that future work is anticipated at such site.

### **IV. REMEDIATION OF CONTAMINATED LANDS**

A. BLM has a particular interest in acquiring three groups of mining claims owned by Standard Metals, free of potential CERCLA liability, that BLM has an option to acquire pursuant to the Consent Decree. These groups of claims, hereinafter called the "Priority Properties," consist of three clusters of patented mining claims in close physical proximity to one another and are identified as follows: Franklin Group (Patented Mining Claims MS1739 Franklin, MS 120 Red Cloud, MS 107 Burrow #2, MS 102 Dakota, and MS 103 Deposit), British Queen Group (Patented Mining Claims MS 643 British Queen, MS 685 Thunderbolt, and MS 943 San Juan Chief), and Polar Star Group (Patented Mining Claims MS 289 Polar Star, MS 7865 Polar Star Extension 1, MS 17759 Polar Star Extension 2, MS 337 Mammoth, MS 290 Annie Wood, and MS 307 John J. Crooke).

B. EPA agrees to consider, on a prioritized basis and in consultation with BLM, whether the Priority Properties are eligible for response actions funded by the EPA Hazardous Substances Superfund or any other EPA program with cleanup authority.

C. EPA further agrees, on BLM's request after entry of the Consent Decree, to work with BLM in accordance with the CERCLA bona fide prospective purchaser

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("BFPP") liability exemptions to determine whether EPA can issue BLM a CERCLA BFPP comfort letter as to the Priority Properties or any other property BLM seeks to acquire under the Consent Decree prior to BLM's potential acquisition of such properties.

### **V. DISPUTE RESOLUTION**

A. Consultation among the designated representatives for the parties hereto should resolve the vast majority, if not all, issues regarding the pursuit of the insurance claims.

B. If the designated representatives do not reach agreement on a disputed item, the issue shall be elevated to the appropriate senior management for each party for further discussion and resolution.

### **V. LIMITATIONS AND DURATION OF AGREEMENT**

A. The parties hereto reserve their rights and authorities under CERCLA, as well as other laws, the National Contingency Plan, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.

B. Nothing in this MOU shall be considered as obligating any party to expend, or as involving the United States, in any contract or other obligation for the future payment of money. The parties recognize that each must operate within the requirements of the budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 USC § 1341.

C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws,

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regulations, and procedures, including those for government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.

D. This MOU is not intended to and does not create any right, benefit or trust obligation, substantive or procedural, enforceable in law or in equity by any party against the United States or the State, their departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

E. This MOU is effective upon the date signed by the last of the parties.

F. This MOU may be executed in counterparts by each of the signatories.

Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

G. By signature below, the undersigned certifies that the individuals listed in this document are representatives of their respective parties and are authorized to act in their respective areas for matters related to this MOU.

\*\*\*\*signature pages follow\*\*\*\*



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**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8**

Date: 11/03/08 By: Sharon L. Kercher  
Sharon L. Kercher  
Director  
Technical Enforcement Program  
Office of Enforcement, Compliance and Environmental  
Justice

Date: 11/03/08 By: Matthew Cohn  
Acting for Matthew Cohn  
Supervisory Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and Environmental  
Justice

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FOR UNITED STATES DEPARTMENT OF AGRICULTURE

Date: 11/17/08

By:

*for Jacqueline L. Parks*  
Rick Cables  
Regional Forester for the Mountain Region  
United States Forest Service

Date: 12-8-08

By:

*for Dennis Bschor*  
Dennis Bschor  
Regional Forester for the Alaska Region  
United States Forest Service

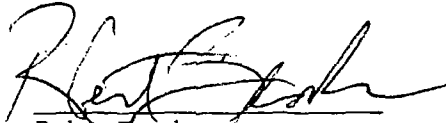
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**FOR UNITED STATES DEPARTMENT OF THE INTERIOR**

Date: 12/2/08 By: Sally Wisely  
Sally Wisely  
State Director  
Colorado State Office  
Bureau of Land Management

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**FOR UNITED STATES DEPARTMENT OF JUSTICE**

Date: 4/6/08 By:   
Robert Brook  
Assistant Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division

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**FOR THE STATE OF COLORADO**

Date: 10/30/08 By: John W. Suthers  
John W. Suthers  
Attorney General and State Natural Resource Trustee


Date: \_\_\_\_\_ By: \_\_\_\_\_  
James B. Martin  
Executive Director Department of Public Health &  
Environment and State Natural Resource Trustee

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Ronald W. Cattany  
Division Director Colorado Division of Reclamation,  
Mining and Safety and State Natural Resource Trustee

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Date: \_\_\_\_\_ By: \_\_\_\_\_  
John W. Suthers  
Attorney General and State Natural Resource Trustee

Date: 10/30/08 By:   
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Executive Director Department of Public Health &  
Environment and State Natural Resource Trustee

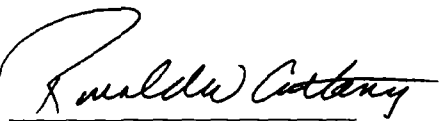
Date: \_\_\_\_\_ By: \_\_\_\_\_  
Ronald W. Cattany  
Division Director Colorado Division of Reclamation,  
Mining and Safety and State Natural Resource Trustee

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**FOR THE STATE OF COLORADO**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John W. Suthers  
Attorney General and State Natural Resource Trustee

Date: \_\_\_\_\_ By: \_\_\_\_\_  
James B. Martin  
Executive Director Department of Public Health &  
Environment and State Natural Resource Trustee

Date: October 27, 2008 By:   
Ronald W. Cattany  
Division Director Colorado Division of Reclamation,  
Mining and Safety and State Natural Resource Trustee